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2003 JAN 14 P 2:46

HEARINGS OFFICE

Attorneys for Respondent

OFFICE OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

STATE OF HAWAII

In the Matter of	)	PCH-2002-14
)	
STONERIDGE RECOVERIES, LLC,	)	ERRATA TO FINAL ORDER GRANTING
	)	RESPONDENT CITY & COUNTY OF
Petitioner,	)	HONOLULU, DEPARTMENT OF BUDGET
	)	AND FISCAL SERVICES' MOTION TO
vs.	)	DISMISS PETITIONER'S REQUEST
	)	FOR ADMINISTRATIVE HEARING
CITY & COUNTY OF HONOLULU,	)	FILED ON DECEMBER 20, 2002;
DEPARTMENT OF BUDGET AND FISCAL	)	CERTIFICATE OF SERVICE
SERVICES,)	
)	
Respondent.)	
)	
)	

ERRATA TO FINAL ORDER GRANTING RESPONDENT CITY & COUNTY
OF HONOLULU, DEPARTMENT OF BUDGET AND FISCAL SERVICES'
MOTION TO DISMISS PETITIONER'S REQUEST FOR
ADMINISTRATIVE HEARING FILED ON DECEMBER 20, 2002

TO: MARK KAWATA, ESQ.
1221 Kapiolani Boulevard, Suite 808
Honolulu, Hawaii 96814

Attorney for Petitioner


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COMES NOW Respondent CITY & COUNTY OF HONOLULU, DEPARTMENT OF BUDGET AND FISCAL SERVICES, by and through its attorneys, DAVID Z. ARAKAWA, Corporation Counsel, and REID M. YAMASHIRO, Deputy Corporation Counsel, and hereby submits the following ERRATA TO FINAL ORDER GRANTING RESPONDENT CITY & COUNTY OF HONOLULU, DEPARTMENT OF BUDGET AND FISCAL SERVICES' MOTION TO DISMISS PETITIONER'S REQUEST FOR ADMINISTRATIVE HEARING FILED ON DECEMBER 20, 2002.

In the Final Order Granting Respondent City & County of Honolulu, Department of Budget and Fiscal Services' Motion to Dismiss Petitioner's Request for Administrative Hearing, filed December 20, 2002, the case number in the caption on the first page should be changed from PCH-2002-11 to PCH-2002-14.

DATED: Honolulu, Hawaii, JAN 14 2003.

DAVID Z. ARAKAWA
Corporation Counsel

By 
REID M. YAMASHIRO
Deputy Corporation Counsel
Attorneys for Respondent

OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of	)	PCH-2002-14
)	
STONERIDGE RECOVERIES, LLC,	)	CERTIFICATE OF SERVICE
)	
Petitioner,)	
)	
vs.)	
)	
CITY & COUNTY OF HONOLULU,)	
DEPARTMENT OF BUDGET AND FISCAL)	
SERVICES,)	
Respondent.)	
_____)	


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof was served upon the
following by mailing the same, postage prepaid, on
JAN 14 2003 _____:

MARK S. KAWATA, ESQ.
1221 Kapiolani Boulevard, Suite 808
Honolulu, Hawaii 96814

Attorney for Petitioner

DATED: Honolulu, Hawaii, JAN 14 2003 _____.



REID M. YAMASHIRO
Deputy Corporation Counsel
Attorney for Respondent

ERRATA

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OFFICE OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

STATE OF HAWAII

In the Matter of	) PCH-2002-11
)
STONERIDGE RECOVERIES, LLC,	) FINAL ORDER GRANTING RESPONDENT
	) CITY & COUNTY OF HONOLULU,
Petitioner,	) DEPARTMENT OF BUDGET AND FISCAL
	) SERVICES' MOTION TO DISMISS
vs.	) PETITIONER'S REQUEST FOR
	) ADMINISTRATIVE HEARING
CITY & COUNTY OF HONOLULU,)
DEPARTMENT OF BUDGET AND)
FISCAL SERVICES,)
)
Respondent.)
_____)

FINAL ORDER GRANTING RESPONDENT CITY & COUNTY
OF HONOLULU, DEPARTMENT OF BUDGET AND FISCAL
SERVICES' MOTION TO DISMISS PETITIONER'S
REQUEST FOR ADMINISTRATIVE HEARING

I. INTRODUCTION

This matter having come before the undersigned
Hearings Officer on December 4, 2002, for consideration of

Respondent City & County of Honolulu, Department of Budget and Fiscal Services' Motion to Dismiss Petitioner's Request for Administrative Hearing, filed November 29, 2002 (the "Motion to Dismiss"); with the Respondent represented by Deputy Corporation Counsel Reid M. Yamashiro, with the Petitioner (opposing the Motion to Dismiss) represented by Mark S. Kawata, Esq.; and,

The Hearings Officer, having considered the Motion to Dismiss, the supporting and opposing memoranda filed by the parties, the entire record of these proceedings, the entire record of the previous proceedings in Stoneridge Recoveries, LLC v. City & County of Honolulu, Department of Budget and Fiscal Services, PCH-2002-11, and the arguments of record, hereby renders the following findings of fact, conclusions of law, and final order.

II. FINDINGS OF FACT

1. The Respondent issued a Notice to Bidders and Proposals Document No. 13878 ("Proposal") to solicit bid proposals to the City and County of Honolulu (the "City") for the furnishing of motor vehicle towing services for Zones I-II, III-IV-V, VI, VII, VIII, and IX for a 60-month period from August 1, 2002, to July 31, 2007.

2. The bid opening was scheduled for June 12, 2002. The Petitioner submitted a bid proposal and was the highest

bidder for the Zone III-IV-V contract at the June 12, 2002 bid opening.

3. By letter dated July 11, 2002, the Respondent notified the Petitioner that the Respondent was rejecting the Petitioner's bid proposal for the Zone III-IV-V contract due to the Petitioner's failure to comply with the bid specifications.

4. By letter dated July 16, 2002, the Petitioner protested the Respondent's rejection of the Petitioner's bid proposal, claiming, among other things, that the disqualification by the City's Purchasing Administrator, Charles Katsuyoshi, was an unfair attempt to slant the bid to another bidder, Oahu Auto Service ("OAS") due to an alleged business relationship with OAS, stating specifically:

The disqualification is an unfair attempt to slant the bid to [OAS], the existing contractor. The [Petitioner] is aware that employees of the Department of Purchasing have existing relationships with [OAS] which would affect the ability to be fair and impartial.

5. By letter dated July 31, 2002, and mailed on August 2, 2002, the Respondent upheld its previous decision to reject the Petitioner's bid proposal for the Zone III-IV-V contract and denied the Petitioner's bid protest.

6. On August 12, 2002, the Petitioner filed a Request for Review of the denial of the July 16, 2002 bid protest with the Department of Commerce and Consumer Affairs ("DCCA"). This case was entitled Stoneridge Recoveries, LLC v. Department of Budget and Fiscal Services, City and County of Honolulu, PCH-2002-11 ("PCH-2002-11").

7. On August 15, 2002, the Respondent filed a motion to dismiss the Petitioner's request for administrative review in PCH-2002-11 on the grounds that the Petitioner failed to timely appeal the denial of its July 16, 2002 bid protest within seven calendar days, as required by Hawaii Revised Statutes ("HRS") Section 103D-712 (Supp. 2001).¹

8. On September 11, 2002, the Petitioner filed a Statement of the Case with the DCCA, which specifically stated:

3. [The Petitioner] believes that the bid process has been tainted by the appearance of Administrator Charles Katsuyoshi at the [OAS] storage facility and office on several Fridays in late June and early July, 2002, when the bid was

¹HRS Section 103D-712 provides in pertinent part:

Requests for administrative review under [HRS] section 103D-709 shall be made directly to the office of administrative hearings of the department of commerce and consumer affairs within seven calendar days of the issuance of a written determination under [HRS] section 103D-310, 103D-701, or 103D-702.

being done, and during the time in which [the Petitioner] was working with the City to have the contract awarded. During this period, particularly after the July 11, 2002 letter, Stoneridge could not get Katsuyoshi to take its calls or hold a meeting. [OAS], on the other hand, was able to see Katsuyoshi in person several times in the period leading up to the bid opening and during the process when Stoneridge was rejected.

9. Following a hearing on September 12, 2002, Hearings Officer Craig H. Uyehara determined that the Petitioner's failure to file a timely appeal with the DCCA by August 9, 2002 divested the DCCA of jurisdiction to consider the Petitioner's request for review. The Hearings Officer granted the Respondent's motion to dismiss in the Hearings Officer's Findings of Fact, Conclusions of Law, and Decision Granting Respondent's Motion to Dismiss Petitioner's Request for Administrative Hearing for Failure to Comply with Section 103D-712, Hawaii Revised Statutes, filed September 23, 2002 ("Hearings Officer's September 23 Decision").

10. The Petitioner filed a Notice of Request for Judicial Review on October 1, 2002, in the Circuit Court of the First Circuit. The case is currently pending before the Honorable Eden Elizabeth Hifo, in Stoneridge Recoveries, LLC v. Office of Administrative Hearings,

Department of Commerce and Consumer Affairs, State of
Hawaii, S.P. No. 02-1-0447.

11. Also on October 1, 2002, the Petitioner submitted a new protest to the Respondent addressing the same issue and allegations that Mr. Katsuyoshi's alleged business relationship with OAS tainted the bidding process and that the disqualification of the Petitioner was an unfair attempt to slant the bidding to OAS, specifically stating the following:

The instant protest is based upon new evidence that came to light this past Saturday, September 28, 2002.

Charles Katsuyoshi, who is in charge of procurement for the instant contract admits in a letter obtained on September 28, 2002 by [the Petitioner], that Katsuyoshi had an ongoing "business relationship" with [OAS] while during the solicitation, bidding and award of the subject contract. A true and accurate copy of the letter is attached. Note that the letter establishes a relationship which is a clear conflict of interest and taints the process.

In addition, [the Petitioner] has spoken to a new witness who confirms that Katsuyoshi was at the [OAS] site, sometimes for short visits and sometimes for car repairs.

At a minimum, it appears that Katsuyoshi was either party to a relationship or accepting gratuities from [OAS], which does not have a license to conduct auto repairs.

The new evidence is a basis for finding the entire process tainted and requiring relief, including a re-bid of the contract. The

disqualification is an unfair attempt to slant the bid to [OAS], the existing contractor.

12. The alleged new evidence was a letter to Ms. Skippi McDermott from Mr. Katsuyoshi, dated September 23, 2002, which the Petitioner claimed to have "discovered" on September 28, 2002, which stated in pertinent part:

I also appreciate your concerns about Doug Dang being a supplier for Mr. Kunishige [the President of OAS] and I being at his office during the past few months. Be assured that my involvement with Mr. Kunishige is strictly business; I have my cars repaired or serviced at his facilities.

13. By letter dated October 31, 2002, mailed on November 4, 2002, the Respondent denied the Petitioner's October 1, 2002 bid protest. The Respondent did not consider the Petitioner's letter of October 1, 2002 to be a new protest because it raised the same issue previously protested by the Petitioner in PCH-2002-11, which was already dismissed by the Hearing's Officer's September 23, 2002 Decision.

14. On November 8, 2002, the Petitioner filed a Request for Review of the denial of the October 1, 2002 protest with the DCCA.

15. At the prehearing conference held on November 21, 2002, the parties stipulated to continue the hearing from November 29, 2002 to December 20 and 27, 2002.

16. HRS Section 103D-701 (Supp. 2001) governs the timeliness of bid protests and provides in pertinent part:

A protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto[.]

(Emphasis added.)

17. Similarly, Hawaii Administrative Rules Section 3-126-3(a) states:

Protests shall be made in writing to the chief procurement officer or the head of a purchasing agency, and shall be filed in duplicate within five working days after the protestor knows or should have known of the facts leading to the filing of a protest. A protest is considered filed when received by the chief procurement officer or the head of a purchasing agency. Protests filed after the five-day period shall not be considered.

(Emphasis added.)

18. Each of the foregoing findings of fact that are more properly deemed a conclusion of law shall be so construed. Each of the following conclusions of law that are more properly deemed a finding of fact shall be so construed.

III. CONCLUSIONS OF LAW

1. In an administrative proceeding of this nature, a motion for dismissal, or other summary disposition may be granted as a matter of law when the legal contentions of the moving party justify such relief, and when the

non-moving party cannot establish a material factual controversy even though the motion is viewed in the light most favorable to the non-moving party. GMP Assocs. Inc. v. Bd. of Water Supply, City and County of Honolulu, PCH-2001-5 (June 18, 2001); RCI Environmental, Inc. v. Timothy Johns, et al., PCH-2000-10 (January 2, 2001).

2. Among the issues and the facts raised in the July 16, 2002 bid protest by the Petitioner was an alleged business relationship between Mr. Katsuyoshi and OAS, which the Petitioner alleged created a bias that tainted the bidding process and slanted the bidding process to favor OAS. This issue was denied by the Respondent by letter dated July 31, 2002. This issue was also raised and disposed of procedurally by the Hearing's Officer's September 23, 2002 Decision in PCH-2002-11.

3. The issues and the facts raised in the October 1, 2002 bid protest are virtually identical to the issues and facts in PCH-2002-11, specifically, that an alleged business relationship between Mr. Katsuyoshi and OAS created a bias which tainted the bidding process and slanted the bidding process to favor OAS.

4. The alleged new evidence of a business relationship between Mr. Katsuyoshi and OAS, allegedly discovered on September 28, 2002, and raised in the

Petitioner's October 1, 2002 bid protest, was already known to the Petitioner on July 16, 2002. The alleged new evidence either reiterates facts pled in PCH-2002-11 (Mr. Katsuyoshi and OAS had an alleged business relationship) or was cumulative of the facts pled in PCH-2002-11 (a new witness also saw Mr. Katsuyoshi at the OAS storage facility).

5. Notwithstanding the Petitioner's statements at the hearing regarding bad faith based on Carl Corporation v. State Department of Education, 85 Hawai'i 431, 451-52, 946 P.2d 1, 21-22 (1995), an examination of the Petitioner's pleadings in this case indicate that the Petitioner did not plead bad faith.

6. The October 1, 2002 bid protest does not mention bad faith, and the Petitioner's pleadings do not identify facts supporting an allegation of bad faith. In the October 1, 2002 bid protest, the Petitioner, by relying on alleged new evidence (which it already knew), attempted to resurrect its argument in its July 16, 2002 bid protest that an alleged business relationship between Mr. Katsuyoshi and OAS created a bias which tainted the bidding process and slanted the bidding process to favor OAS.

7. Because an examination of the Petitioner's pleadings in this case indicates that the Petitioner did not plead bad faith, the issues and facts of the July 16, 2002 and October 1, 2002 bid protests are virtually identical. The Petitioner knew of the issues and the facts on July 16, 2002, and was required to file a bid protest based on these issues and facts within five working days of July 16, 2002, pursuant to HRS 103D-701 and HAR 3-126-3(a).

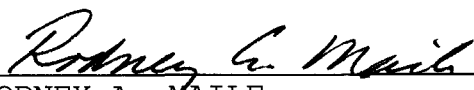
8. Further, even assuming, arguendo, that Petitioner's pleadings in this case had pled bad faith, because the facts of the July 16, 2002 and October 1, 2002 bid protests are virtually identical and the alleged new evidence was known to Petitioner on July 16, 2002, Petitioner was required to file a bid protest alleging bad faith within five working days of July 16, 2002, pursuant to HRS 103D-701 and HAR 3-126-3(a).

9. Because the October 1, 2002 bid protest relies on issues and facts virtually identical to the July 16, 2002 bid protest and does not raise an independent basis for appeal, the Respondent properly denied the October 1, 2002 bid protest. GTE Hawaiian Tel. Co. v. Dep't of Finance, County of Maui, PCH-98-6 (December 9, 1998).

IV. FINAL ORDER

It is hereby ORDERED that, for good cause shown,
Respondent City & County of Honolulu, Department of Budget
and Fiscal Services' Motion to Dismiss Petitioner's Request
for Administrative Hearing, filed November 29, 2002, is
GRANTED.

DATED: Honolulu, Hawaii, DEC 20 2002.



RODNEY A. MAILE
Administrative Hearings
Officer

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